Office-Supreme Court, U.S.
FILED
FEB 16 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1418~~ 236

PEPSI COLA BOTTLING COMPANY OF PUERTO RICO, INC.,
Petitioner

v.

ALEJANDRO OTERO, ET ALS., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

JUAN R. TORRUELLA DEL VALLE
IBM Building
1605 King's Court
Santurce, Puerto Rico
Attorney for Petitioner

Of Counsel

JOSÉ G. GONZÁLEZ
IBM Building
1605 King's Court
Santurce, Puerto Rico

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

TABLE OF CONTENTS

	Page
Citation to Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement of the Case	3
Reasons for Granting the Writ	6
Conclusion	11

Appendix A—Complaint Filed by Respondents in the San Juan Part of the Superior Court of Puerto Rico	1a
Appendix B—Judgment of the Supreme Court of Puerto Rico	3a
Appendix C—Judgment of the Superior Court of Puerto Rico, San Juan Part	4a
Appendix D—Statute Involved	5a
Appendix E—Grievance and Arbitration Clause	5a
Appendix F—Complaint Filed by Petitioner in the United States District Court for the District of Puerto Rico in Civil No. 163-63	8a
Appendix G—Answer Filed by Respondent in the United States District Court for the District of Puerto Rico in Civil No. 163-63	10a
Appendix H—Letter Requesting Meeting of Grievance Committee	12a

CITATIONS

Beckley v. *Teyssier*, 332 F. 2d 495 (CA 9, 1964)	9
Donahue v. *Susquehanna Colleries Co.*, 138 F. 2d 311 (CA 3, 1945)	9
Dowd Box Co. v. *Courtney*, 368 U.S. 502 (1962)	7, 10
Drake Bakeries, Inc. v. *Local 50*, 370 U.S. 254 (1962)	7

Page

Evans v. *Hudson Coal Co.*, 151 F. 2d 311 (CA 3, 1945) .. 9
Goodall-Sanford, Inc. v. *United Textile Workers of America*, 353 U.S. 550 (1957) 2
Hughes Tool Co. v. *NLRB*, 147 F. 2d 69 (CCA 5, 1945) 7
NLRB v. *Borg Warner Corp.*, 356 U.S. 342 (1958) 7
Martinez v. *Commonwealth Oil Refining Co.*, — P.R.R. — (1965), cert. den. 383 U.S. 936 (1966) 6
Packinghouse Workers v. *Needham Packing Co.*, 376 U.S. 247 (1946) 7, 10
Perez v. *Autoridad de Fuentes Fluviales*, — P.R.R. — (1963) 5, 6
Republic Steel Corp. v. *Maddox*, 379 U.S. 650 (1965) 7, 8-9, 10, 11
Smith v. *Evening News Assoc.*, 371 U.S. 195 (1962) ... 7
Teamsters Union v. *Lucas Flour Co.*, 369 U.S. 95 (1962) 7, 10, 11
Textile Workers Union v. *Lincoln Mills*, 353 U.S. 448 (1957) 6, 7, 10
UAW v. *Hoosier Cardinal Corp.*, 383 U.S. — (Mar. 24, 1966) 11
United Steelworkers v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960) 7
Watkins v. *Hudson Coal Co.*, 151 F. 2d 311, 319 (CA 3, 1945) 9

STATUTES CITED

Constitution of the United States, Article I, Section 8, Clause 3 3

Labor Management Relations Act, Section 301(a), 61 Stat. 156, 29 U.S.C. 185(a) 2, 3

75 Stat. 417 (28 U.S.C. 1258(3)) 2

MISCELLANEOUS

U.S. Bureau of the Census, Census of Manufacturers: 1963, Puerto Rico, MC 63-P.R., U.S. Government Printing Office, Washington, D.C. 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No.

PEPSI COLA BOTTLING COMPANY OF PUERTO RICO, INC.,
Petitioner

v.

ALEJANDRO OTERO, ET ALS., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

Petitioner, Pepsi Cola Bottling Company of Puerto Rico, Inc., prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the Commonwealth of Puerto Rico, entered March 18th, 1966, reversing a judgment of the San Juan Part of the Superior Court of Puerto Rico, which dismissed a complaint filed by Respondents[1] and directed that Re-

[1] In addition to the above named respondent, 79 other employees are named in the complaint, Appendix A, infra p. 1a, R. 1 [References are to pages of the certified transcript of the Record which has been filed with the Court.]

spondents' claims be submitted to the grievance and arbitration proceedings established under the collective bargaining agreements entered into by the parties.

CITATION TO OPINIONS BELOW

The judgment of the Supreme Court of the Commonwealth of Puerto Rico is unreported; it is printed in Appendix B, *infra* p. 3a and is reproduced in the certified transcript (R. 208). The judgment of the San Juan Part of the Superior Court of Puerto Rico dismissing the complaint and directing that the claim be submitted to arbitration is not reported. It is printed in Appendix C, *infra,* p. 4a, and is reproduced in the certified transcript of the record (R. 179).

JURISDICTION

The judgment of the Supreme Court of the Commonwealth of Puerto Rico is dated March 18, 1966 and was entered on the same date. Since Petitioner is claiming a right under a statute of the United States, jurisdiction of this Court is invoked under 75 Stat. 417 (28 U.S.C. 1258(3)). *Goodall-Sanford, Inc.* v. *United Textile Workers of America,* 353 U.S. 550 (1957).

QUESTIONS PRESENTED

Whether, as regards an employer in an industry affecting commerce, and who meets the jurisdictional standards of the National Labor Relations Board:

1. Federal substantive law under Section 301(a) of the Labor-Management Relations Act (61 Stat. 156, 29 U.S.C. 185(a)), requires employees to exhaust the administrative remedies of an appropriate collective

bargaining agreement as a condition precedent to an action in court for allegedly unpaid wages.

2. Federal substantive law under Section 301(a) of the Labor-Management Relations Act (61 Stat. 156, 29 U.S.C. 185(a)) and Article I, Section 8, Clause 3, of the Constitution of the United States, preempts a state ruling permitting action in court by employees for alleged unpaid wages without prior exhaustion of the administrative remedies of an appropriate collective bargaining agreement.

STATUTES INVOLVED

The statutory provision directly involved is Section 301(a) of the Labor Management Relations Act of 1947 (61 Stat. 156, 29 USC Sec. 185(a)). The text of this provision is reprinted in Appendix D, *infra*, p. 5a.

STATEMENT OF THE CASE

Petitioner is a corporation in the business of manufacturing and bottling a soft drink known by the trade name of "Pepsi-Cola", as well as other similar products (R. 177). It annually imports in interstate commerce syrup concentrate valued between $350,000 to $400,000 (R. 177).

On or about January 10th, 1964, Respondents filed a complaint against Petitioner in the Superior Court of Puerto Rico, San Juan Part, alleging that Petitioner had failed to pay certain overtime allegedly worked totaling the sum of $75,000, and in addition an equal amount in liquidated damages (Appendix A, *infra*, p. 1a, (R. 1).

At the time of the filing of said complaint there was in existence a collective bargaining agreement negoti-

ated between Respondents' representative, Unidad General de Trabajadores de Puerto Rico (U.G.T.), affiliated to the United Brewery Workers of America, AFL-CIO, Local 611 (hereinafter called the Brewery Workers Local) and Petitioner (R. 150), which contract contained a grievance and arbitration clause (Appendix E, *infra,* p. 5a, R. 153). Respondents did not take any step under this grievance procedure prior to the present suit (Answer to Interrogatory No. 6, R. 5-148) although this procedure had been used on other occasions to settle grievances of this nature (R. 178).

Since on or about May 6, 1963 there was pending in the United States District Court for the District of Puerto Rico, a declaratory judgment suit and class action brought by Petitioner against the Brewery Workers Local and five of the present Respondents[2], to seek clarification of certain wage and hour questions (Appendix F, *infra,* p. 8a, R. 171). In said case, the Brewery Workers Local and the class representatives[3] of Respondents alleged that Petitioner "has not in any way complied with the administrative proceeding fixed in the collective bargaining agreement negotiated between plaintiff and defendants, which proceeding is a *sine qua non* requisite to be followed prior to the filing of any judicial action in the instant controversy." (Appendix G, *infra,* p. 10a, R. 173). Respondents knew of said proceeding at the time the present action was commenced.[4] (See Answer to Interrogatory No. 7, R. 5-148).

---

[2] Santos Rivera Canales, Francisco Colón, Gregorio Maldonado, José Inés Soto and Julián Sierra.

[3] This fact was admitted (Appendix G, infra p. 10a, R. 174).

[4] The suit has since been dismissed.

On September 10, 1964, Petitioner moved for dismissal of the present action alleging the failure of Respondents to exhaust the collective bargaining contract remedies (R. 149).

On December 14, 1964, Judge Manuel A. Moreda, of the San Juan Part of the Superior Court of Puerto Rico, decided that Federal Law required dismissal of the suit and ordered arbitration of the grievance. (Appendix C, *infra*, p. 4a, R. 179).

Respondents sought review of this decision before the Supreme Court of the Commonwealth of Puerto Rico (R. 179). Prior to said action, however, Respondent through their Union agents, sought a meeting of the grievance committee, in compliance to the decision of the lower Court (Appendix H, *infra*, p. 12a, R. 206). Said meeting never took place for reasons not herein relevant.

On March 18, 1966, the Supreme Court of the Commonwealth of Puerto Rico reversed the decision of the lower Court (Appendix B, *infra*, p. 3a, R. 208). The decision finds that Petitioner was in interstate commerce; that collective bargaining agreements were in effect between Petitioner and Respondents' union throughout the period of time covered by the complaint (January 10th, 1954—January 13, 1964); and that said contracts contained arbitration clauses. The court below held, however, that since these contracts were negotiated and signed prior to its decision in *Pérez* v. *Autoridad de Fuentes Fluviales*, D.P.R. (January 25, 1963),[5] Respond-

[5] A certified translation of this decision has been filed with the certified record.

ents were not required to exhaust the administrative remedies of the contracts before filing suits in courts. In *Pérez* v. *Autoridad de Fuentes Fluviales, supra,* the Supreme Court of the Commonwealth of Puerto Rico adopted as local Puerto Rican law the federal standard of requiring exhaustion of contract remedies prior to court action. The court decided however that this standard would be applied in a prospective manner only, to contracts negotiated and signed after the said decision. In *Martínez* v. *Commonwealth Oil Refining Co.,* D.P.R. (res. June 30, 1965),[6] cert. den. 383 U.S. 936 (March 7, 1966), the court below held that this local limitation was equally applicable to industries in interstate commerce.

REASONS FOR GRANTING THE WRIT

There are in Puerto Rico approximately 2,200 manufacturers engaged in commerce.[7] These employers employ in excess of 78,000 production employees with annual payrolls in excess of $160,000,000. They ship goods in commerce in excess of $1,480,000,000 annually. The Petitioner is one of these employers.

As to these employers the decision of the Supreme Court of the Commonwealth of Puerto Rico in the present case is clearly contrary to controlling decisions of this Court in an area of the law where federal substantive law is paramount. *Textile Workers Union*

---

[6] Id.

[7] U.S. Bureau of the Census, Census of Manufacturers: 1963, Puerto Rico MC 63-P.R., U.S. Government Printing Office, Washington, D.C., at pages 36, 83. Official figures later than 1963 are presently unavailable. The said statistics do not include non-manufacturing employers such as service and construction, nor do they include non-production employees.

v. *Lincoln Mills,* 353 U.S. 448 (1957); *Dowd Box Co.* v. *Courtney,* 368 U.S. 502 (1962); *Teamsters Union* v. *Lucas Flour Co.,* 369 U.S. 95, (1962); *Smith* v. *Evening News Assoc.,* 371 U.S. 195 (1962); *Packinghouse Workers* v. *Needham Packing Co.,* 376 U.S. 247 (1964); *Republic Steel Corp.* v. *Maddox,* 379 U.S. 650 (1965).

If the decision of the court below is allowed to stand, Petitioner and other industries engaged in commerce in Puerto Rico will be receiving unequal treatment to that of similarly situated industries in other jurisdictions of the United States. Employers and labor organizations in Puerto Rico should not be left without the benefit of these decisions of the Court.

a. Federal Substantive Law Requires the Exhaustion of Contract Remedies.

The establishment of orderly and just methods for presenting and adjusting grievances is a mandatory subject of bargaining. *NLRB* v. *Borg Warner Corp.,* 356 U.S. 342 (1958); *Hughes Tool Co.* v. *NLRB,* 147 F. 2d 69 (CCA 5, 1945). Thus, established federal policy favors the resolution of labor disputes through grievance and arbitration procedures negotiated by the parties in collective bargaining agreements. *United Steelworkers* v. *Enterprise Wheel and Car Corp.,* 363 U.S. 593 (1960).

In aid of this policy of encouraging the peaceful settlement of labor disputes through orderly procedures, the Court has consistently emphasized the exhaustion of contract remedies as a condition precedent to action in the courts. *Textile Workers Union* v. *Lincoln Mills, supra; Smith* v. *Evening News Assoc., supra,* footnote 1 at page 196; *Drake Bakeries, Inc.* v. *Local 50,* 370 U.S. 254 (1962); *Republic Steel Corp.* v.

Maddox, supra. In the *Maddox* case the Court said, at pages 652-653:

> "As a general rule in cases to which federal law applies, federal labor policy requires that individual employees wishing to assert contract grievances must attempt use of the contract grievance procedure agreed upon by employer and union as the mode of redress. If the union refuses to press or only perfunctorily presses the individual's claim, differences may arise as to the forms of redress then available. But unless the contract provides otherwise, *there can be no doubt that the employees must afford the union the opportunity to act on his behalf.* Congress has expressly approved contract grievance procedures as a preferred method for settling disputes and stabilizing the 'common law' of the plant. Union interest in prosecuting employee grievances is clear. Such activity complements the union's status as exclusive bargaining representative by permitting it to participate actively in the continuing administration of the contract. In addition, conscientious handling of grievance claims will enhance the union's prestige with employees. Employers' interests, for their part, are served by limiting the choice of remedies available to aggrieved employees. And it cannot be said, in the normal situation, that contract grievance procedures are inadequate to protect the interests of an aggrieved employee until the employee has attempted to implement the procedures and found them so.
>
> A contrary rule which would permit an individual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it. In addition to cutting across the interests already mentioned, it would deprive employer and union of the ability to establish a uniform and exclusive method for orderly settlement of employee grievances. If a grievance pro-

> cedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation 'would inevitably exert a disruptive influence upon the negotiation and administration of collective agreements.'"[8] (Emphasis added).

The lower federal courts have consistently required exhaustion of contract remedies in suits for causes of action similar to the present case. *Beckley* v. *Teyssier,* 332 F. 2d 495 (CA 9, 1964); *Evans* v. *Hudson Coal Co.,* 165 F. 2d 970, 973 (CA 3, 1947); *Watkins* v. *Hudson Coal Co.,* 151 F. 2d 311, 319 (CA 3, 1945); *Donahue* v. *Susquehanna Colleries Co.,* 138 F. 2d 3, 6-7 (CA 3, 1943). The decision of the Supreme Court of the Commonwealth of Puerto Rico in the present matter is in direct conflict with said cases and is thus contrary to federal substantive law.

In *Beckley,* plaintiffs sued under the Fair Labor Standards Act without exhausting the contract remedies. The trial court dismissed the suit notwithstanding plaintiffs' allegation that their action was statutory and not contractual. The Court of Appeal, in sustaining the lower court said, at page 497:

> "It is clear to us that the claims of appellants are ones growing out of the relation of employer and employee and necessarily involve the application and interpretation of the contract provisions above quoted, and therefore fall squarely within Article V of the Collective Bargaining Agreement. To sustain appellants' contention would be to emasculate the arbitration provisions contained in the Collective Bargaining Agreement."[9]

---

[8] Citations and footnotes have been omitted.

[9] Id.

In the instant case the parties had used the grievance procedure on previous occasions to resolve similar claims (R. 178); Respondents affirmatively requested dismissal of similar suits by reason of Petitioner's failure to exhaust contract remedies (Appendix G, *infra*, p. 10a, R. 174); and Respondents took initial steps to comply with the judgment of the lower court ordering arbitration. (Appendix H, *infra*, p. 12a, R. 206). In view of these facts, the rule espoused by the Court below "has little to commend it." *Republic Steel Corp.* v. *Maddox, supra.*

If the decision of the Court below is permitted to stand, employers and labor organizations in Puerto Rico will be placed in the disadvantageous position of having to conform to federal law, which encourages the establishment and compliance of contractual procedures, while at the same time failing to receive the benefit of stable and orderly labor relations through freedom from multiplicity of actions and procedures.

b. Federal Substantive Law Is Paramount and Inconsistent State Action Must Be Set Aside.

It is now beyond argument that federal labor contracts must be interpreted pursuant to federal substantive law. *Textile Workers Union* v. *Lincoln Mills, supra; Dowd Box* v. *Courtney, supra; Teamsters* v. *Lucas Flour Co., supra; Packinghouse Workers* v. *Needham Packing Co., supra.*

"... [I]ncompatible doctrines of local law must give way to principles of federal labor law" as the "subject matter of § 301(a) 'is peculiarly one that calls for uniform law' ", being that "[t]he importance of the area which would be affected by separate systems of substantive law makes the need for a single body of federal law particularly compelling." *Teamsters Unions* v. *Lucas Flour Co., supra,* at pages 103-104.

In *UAW* v. *Hoosier Cardinal Corp.*, 383 U.S. (March 24, 1966), the Court said, at page :

> "The need for uniformity, then, is greatest where its absence would threaten the smooth functioning of those consensual processes that federal labor law is chiefly designed to promote—the formation of the collective agreement and the private settlement of disputes under it . . ."

If "limiting the choice of remedies" and the prevention of "disruptive influences upon the negotiation and administration of collective agreements", *Republic Steel Corp.* v. *Maddox,* supra, are to have significant practical value to everyday labor relations, the Court should, at this time, exercise its supervisory functions. Further protracted litigation, with its attending delays, costs and disturbance of relations will ill promote federal labor policy.

The incompatible local rule of the Supreme Court of the Commonwealth of Puerto Rico must therefore give way to paramount national policy.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

JUAN R. TORRUELLA DEL VALLE
IBM Building
1605 King's Court
Santurce, Puerto Rico
Attorney for Petitioner

Of Counsel

JOSÉ G. GONZÁLEZ
IBM Building
1605 King's Court
Santurce, Puerto Rico

APPENDIX A

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

Civil No. 64-109

Wages

Alejandro Otero, Gregorio Peña, Angel Ortiz, Hipolito Berrios, Felix Rivera, Ildefonso Martinez, Abraham Torres, Ramon Berrios, Jose Rosado, Jose Ines Soto, Luis G. Feliciano, Benito Morales, Luis A. Miranda, Francisco Carrasquillo, Victor Marrero, Antonio Delgado, Eleuterio Ortiz, Isidro Figueroa, Angel M. Oyola, Benito Andujar, German Torres, Francisco Cancel, Julian Sierra, Marcial Matos, Ramon Pabon, Alfredo Suarez, Jose E. Lugo, Antonio Garcia, Hector L. Maldonado, Hector L. Bonilla, Andres Peña, Angel L. Bonilla, Angel L. Ortiz, Victor Nieves, Rafael Robles, Cristobal Lopez, Francisco Mangual, Roberto Diaz, Santos Rivera, Daniel Pena, Jose A. Sauri, Samuel Perez, Fremiot Ramirez, Daniel Mujica, Edgardo B. Garayua, Rafael A. Ortiz, Ramon M. Santiago, Jorge Berrios, William Velez, Ramon Jorge, Wenceslao Del Moral, Carmelo Class, Miguel A. Pellicia, Jose V. Rodriguez, Juan A. Berrios, Francisco Colon, Damaso Ortiz, Santiago Maldonado, Andres Sanchez, Gregorio Maldonado, Samuel Polanco, Pedro L. Rodriguez, Carmelo Perez, Gregorio Diaz, Angel L. Orsini, Perdo J. Colon, Felipe Santiago, Angel L. Sanchez, Fidel Burgos, Federico Rivera, Domitilo Delgado, Angel Visa, Victor Vega, Tomas Gonzalez, Rafael Rivera, Victor Davila, Efrain Oquendo, Miguel Rodriguez, Leopoldo Cornier, Jose E. Ortiz,

Plaintiffs,

v.

Pepsi Cola Bottling Co. of Puerto Rico, Inc., *Defendant.*

Complaint

Civil No. 64-109

To the Honorable Court:

Now come the plaintiffs in the above-captioned case, through their undersigned counsel, and respectfully allege:

1. During the dates involved in this claim, that is, from January 10, 1954, up to the date this complaint was filed, plaintiffs worked for the defendant, hours in excess of eight (8) hours within each TWENTY-FOUR (24) consecutive-hour period and in excess of FORTY (40) and of FORTY-EIGHT (48) within the regular workweek, without the hours thus worked having been paid to them at a rate double the regular wage rate earned by each plaintiff.

2. For the above-mentioned concept defendant owes plaintiffs the sum of SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00) in the specific amount that may result for each plaintiff after computing the payrolls, daily work sheets, payment records, and other evidence pertinent hereto.

WHEREFORE, plaintiffs respectfully pray the Honorable Court to order the defendant to pay to plaintiffs the sum of SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00) plus the same amount as liquidated damages as provided by law, as well as attorney's fees.

San Juan, Puerto Rico, January 10, 1964.

/s/ VICTOR M. BOSCH
Nicolas Delgado Rivera
Counsel for plaintiffs
Box 648
San Juan, Puerto Rico

APPENDIX B

IN THE SUPREME COURT OF PUERTO RICO

C-65-11

Alejandro Otero *et al., Petitioners*

v.

Superior Court of Puerto Rico, San Juan Part, Hon. Manuel A. Moreda, Judge, *Respondent*

v.

Pepsi-Cola Bottling Company of Puerto Rico, *Intervener*

Judgment

Division composed of Mr. Justice Belaval as Chief Judge of Division, Mr. Justice Santana Becerra, Mr. Justice Blanco Lugo, and Mr. Justice Ramirez Bages

San Juan, Puerto, Rico, March 18, 1966

Petitioners filed a complaint against Pepsi Cola Bottling Company of Puerto Rico, an enterprise engaged in interstate commerce, claiming extra hours worked in excess of 8 hours per day and between 40 and 48 hours per week. It covers the period of time comprised between January 10, 1954, and the date on which the complaint was filed, January 13, 1964, during which time certain collective agreements were in force between respondent and the Union mittee a written complaint setting forth the facts in issue representing plaintiffs, containing arbitration clauses. All these agreements were negotiated and signed prior to our opinion in *Perez* v. *Water Resources Authority,* P.R.R. (January 25, 1963).[1] The lower court held that since

[1] In the first agreement signed *after* the aforesaid opinion it was stipulated that "The arbitrator may *not* interfere in wage claims . . . overtime . . . "

the enterprise was engaged in interstate commerce, the restriction concerning the prospective effectiveness of the *Preaz* doctrine was not applicable, and ordered the claim to be submitted to arbitration.

In the light of the decision of *Martinez* v. *Commonwealth Oil Refining Co.*, P.R.R. (dec. June 30, 1965), cert. den. 382 U.S. (March 7, 1966), that Court committed an error. *Cf.* judgment entered today in *Withington* v. *RCA Communications, Inc.*, R-64-148.

The judgment entered by the Superior Court, San Juan Part, on December 14, 1964, is hereby set aside and the case is remanded for further proceedings.

It was thus ordered and decreed by the Court as witnesses the signature of the Chief Justice.

/s/ Luis Negrón Fernández
Chief Justice

I attest:

/s/ Joaquín Berríos
Acting Secretary

APPENDIX C

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

Civil No. 64-109

Wages

Alejandro Otero *et al.*, *Plaintiffs*

v.

Pepsi Cola Bottling Co. of Puerto Rico, *Defendant*

Order

In consideration of the fact that the defendant is an enterprise subject to the provisions of the Federal Act and that there exists between the parties a collective agreement

adquately worded to submit the instant claim to arbitration, which remedy has not been exhausted, the complaint is dismissed and it is hereby ordered that the plaintiffs' claim be submitted to arbitration.

Let this Order be served.

San Juan, Puerto Rico, December 14, 1964.

/s/ MANUEL A. MOREDA
Judge

APPENDIX D

Statute Involved

Labor Managament Relations Act of 1947, Section 301 (a) (61 Stat. 156, 29 U.S.C. § 185(a)):

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in the controversy or without regard to the citizenship of the parties."

APPENDIX E

Article III

Grievance Committee

A. The Union shall designate one (1) representative in each department of the Company included within the bargaining unit. The Union shall notify the Company in writing the names of the representatives of the department, and the Union shall promptly notify the Company in writing of any changes.

B. Should any controversy, dispute, conflict, or any misunderstanding arise for any reason whatsoever between the Union and the Company involving the meaning and application of this agreement, or any controversy, conflict, or dispute between the Union and the Company regarding the lay-off or dismissal of one or more employees, as hereinafter defined, such matter may be finally and unappealably settled as follows:

First Step

The employee in question, through the Union representative, shall discuss the matter with the general manager or person acting in his place not later than three (3) working days after the incident or complaint has arisen. Three (3) working days thereafter the general manager or person acting in his place shall submit his answer to settle the matter.

Second Step

(1) If no agreement is reached within the above-prescribed period, the Grievance Committee, composed of two (2) Company representatives and two (2) Union representatives, shall acquire jurisdiction to take cognizance of and decide the issue.

(2) Not later than five (5) working days after the decision of the general manager is known, the Union, if it decides to proceed with the case, shall file before the Committee a written complaint setting forth the facts in issue and shall call the latter for a meeting. Once the aforesaid complaint is filed before the Grievance Committee, the latter shall meet and consider the allegations of the parties in question, receiving any pertinent evidence. The Committee must render a decision within ten (10) working days following the date on which the Union filed its complaint. The Committee must keep minutes of each meeting and said minutes shall be signed by the members of the Committee.

(3) Should the Grievance Committee be unable to render a decision within the above-prescribed period of time, it shall request the Arbitration and Mediation Bureau of the Labor Department of Puerto Rico to designate an arbitrator to work together with the Committee members in order to settle the matter as soon as possible. The Committee thus composed of five (5) members shall have authority to settle the matter definitively after hearing the case on its merits.

C. The Grievance Committee shall have jurisdiction where the Union alleges that an employee or employees have been laid off or dismissed without just cause and if in such case the Committee should determine, on the basis of the weight of the evidence heard, that the employee was laid off or dismissed without just cause, the Committee shall order the Company to take any affirmative action, including the reinstatement of the employee or employees involved, with or without back pay, which in the judgment of the Committee may be necessary to enforce the decision of the latter; provided, however, that in order for the Union or an employee to be entitled to present a dismissal or lay-off before the Grievance Committee, the employee in question must have finished his probationary period.

D. The decisions of the Grievance Committee, with or without the arbitrator, shall be final and unappealable.

E. The Grievance Committee has no jurisdiction to alter, amend, or modify the decisions of this agreement.

F. Within ten (10) days following the date of execution hereof the parties shall designate their representatives before the Grievance Committee and shall, in addition, designate two (2) substitute members for each party. Both parties may change their representatives in the Committee, but they must promptly notify the other party in writing of any such changes.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

No. 163-63

Pepsi Cola Bottling Company of Puerto Rico, Inc.,
Plaintiff,
v.
Unidad General de Trabajadores de Puerto Rico (UGT), Afiliada a la Unidad Brewery Workers of America, AFL-CIO, Local 611; Santos Rivera Canales, Francisco Colon, Gregorio Maldonado, Jose Ines Soto, and Julian Sierra, *Defendants.*

Filed May 6, 1963

Declaratory Judgment Suit and Class Action

Complaint

To the Honorable Court:

Now comes Pepsi Cola Bottling Company of Puerto Rico, Inc. (hereinafter referred to as the Plaintiff) and respectfully alleges:

1. Plaintiff is a corporation organized under the laws of the Commonwealth of Puerto Rico with its principal place of business in Hato Rey, San Juan, Puerto Rico, wherein it is engaged in the manufacturing of soft drinks.

2. Unidad General de Trabajadores de Puerto Rico (UGT), Afiliada a la Unidad Brewery Workers of America, AFL-CIO, Local 611 (hereinafter referred to as Defendant Union) is a labor organization which represents the employees of Plaintiff, including Co-Defendants Santos Rivera Canales, Francisco Colón, Gregorio Maldonado, José Inés Sote, and Julián Sierra.

3. Co-Defendants Santos Rivera Canales, Francisco Colón and Gregorio Maldonado are employed by Plaintiff as driver-salesmen, and Co-Defendants José Inés Soto and Julián Sierra are employed by Plaintiff as assistant driver-

salesmen (these Co-Defendants will be referred to hereinafter collectively as Defendant Employees).

4. The Defendant Employees are representatives of the class which has been described in the previous paragraph.

5. The Defendant Union, in the name of Defendant Employees and the other members of their class, contends that Plaintiff violates the Fair Labor Standards Act of 1938, as amended, 29 USC 201-219, in its payment of Defendant Employees and other employees similarly situated.

6. The amount in controversy exceeds the sum of $10,000.00, exclusive of interest and costs.

7. The jurisdiction of this Hon. Court is based upon 28 USC Sec. 1331.

8. Plaintiff contends that its payment of defendant employees and other employees similarly situated fully complies with the Fair Labor Standards Act of 1938, as amended, 29 USC 201-219.

9. A material controversy now exists between Plaintiff, Defendant Union and Defendant employees and other employees similarly situated.

WHEREFORE, plaintiff prays that this Honorable Court enters judgment declaring that plaintiff is complying with the Fair Labor Standards Act of 1938, as amended, 29 USC 201-219, and grant such other and further considerations as the Honorable Court may deem appropriate and just.

In San Juan, Puerto Rico, this 2d day of May, 1963.

FIDDLER, GONZALEZ & RODRIGUEZ
Attorneys for Plaintiff
IBM Bldg.—1605 Kings Court
Box 3507—San Juan, P. R.

By: (s) JUAN R. TORRUELLA
Juan R. Torruella del Valle

APPENDIX G

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

Civil No. 163-63

Pepsi Cola Bottling Company of Puerto Rico, Inc., *Plaintiff*,

v.

Unidad General de Trabajadores de Puerto Rico (UGT), Afiliada a la Unidad Brewery Workers of America, AFL-CIO, Local 611; Santos Rivera Canales, Francisco Colon, Gregorio Maldonado, Jose Ines Soto, and Julian Sierra, *Defendants*.

Answer to the Complaint

To the Honorable Court:

Now come defendants through their undersigned attorney, and answering the complaint in the instant proceeding, respectfully state:

1. Defendants admit allegations number 1, 2, 3, 4, 5, 6 and 9 of the complaint.

2. Defendants deny allegation number 8 of the complaint, to the effect that plaintiff is fully complying with the Fair Labor Standards Act of 1938, as amended, 29 USC 201-219, and on the contrary state that plaintiff has violated and continues violating said Act, in its payment of wages to defendant employees and other employees similarly situated.

3. Allegation number 7 is hereby denied based upon the fact that plaintiff has not in any way complied with the administrative proceeding fixed in the collective bargaining agreement negotiated between plaintiff and defendants, which proceeding is a *sine qua non* requisite to be

followed prior to the filing of any judicial action in the instant controversy.

WHEREFORE defendants pray that this Honorable Court enter judgment dismissing the complaint in this case.

San Juan, Puerto Rico, this 24th day of September 1963.

(s) MARTÍN AVILÉS BRACERO
Martín Avilés Bracero
Attorney for Defendants
Box 815—Tel. 722-0993
San Juan, Puerto Rico

A true copy of the above answer to the complaint has been sent by mail to Mr. Juan R. Torruella del Valle, Esq., attorney for plaintiff, Box 3507, San Juan, Puerto Rico, on September 24, 1963.

(s) MARTÍN AVILÉS BRACERO
Martín Avilés Bracero

APPENDIX H

Mr. Charlie T. Mock, Jr.
Pres. Pepsi-Cola Bottling
Co. of Puerto Rico, Inc.

Dear Mr. Mock:

This is to ask you to meet with the Grievance Committee in order to hear a complaint of the workers of your Company in the sense that they are working extra hours receiving no pay therefor.

For this reason we shall be in your office Wednesday, January 20, 1965, at 5:00 p.m., to hear the case.

Truly yours,

(s) ANSELMO SANTIAGO
S.I.U. Organizer
1313 Fernández Juncos Ave.
Santurce, Puerto Rico

cc: S.I.U.

Felipe de Jesús

NOTE: We are thus complying also with the Order of the Superior Court, San Juan Part, which on December 14, 1964, ordered submission to the Grievance Committee of the wage claim which in connection with Civil Case No. 64-109 was heard in that Part.